



# Department of Defense INSTRUCTION

NUMBER 4105.70

June 29, 1998

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ASD(FMP)

SUBJECT: Sale or Rental of Sexually Explicit Material on DoD Property

- References:
- (a) Assistant Secretary of Defense for Force Management Policy Memorandum, "Sale or Rental of Sexually Explicit Material on DoD Property," December 20, 1996 (hereby canceled)
  - (b) Secretary of Defense Memorandum, "Delegation of Authorities," November 14, 1996
  - (c) Under Secretary of Defense for Personnel and Readiness Memorandum, "Delegation of Authority and Assignment of Duties," December 6, 1996
  - (d) Section 2489a of title 10, United States Code
  - (e) DoD Directive 1330.9, "Armed Services Exchange Regulations," December 15, 1986
  - (f) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," November 28, 1986, authorized by [DoD Directive 8910.1](#), June 11, 1993

## 1. PURPOSE

This Instruction supersedes reference (a) and, pursuant to references (b) and (c), implements reference (d), consistent with reference (e), by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

## 2. APPLICABILITY AND SCOPE

This Instruction:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

2.2. Shall not confer rights on any person.

### 3. DEFINITIONS

3.1. Dominant Theme. A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

3.2. Lascivious. Lewd and intended or designed to elicit a sexual response.

3.3. Material. An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

3.4. Property Under the Jurisdiction of the Department of Defense. Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as "retail outlets"), excluding, for the purposes of this Instruction, entities that are not instrumentalities of the United States.

3.5. Sexually Explicit Material. Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

### 4. POLICY

In implementing 10 U.S.C. 2489a (reference (d)), it is DoD policy that:

4.1. No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

4.2. Material shall not be deemed sexually explicit because of any message or

point of view expressed therein.

## 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

5.1.1. Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this Instruction;

5.1.2. Establish, and appoint a chair of, the Resale Activities Board of Review (the "Board") and approve senior representatives from the Army and Air Force Exchange Service, the Navy Exchange Service, and the Marine Corps Exchange Service; and approve a senior representative from each of the Military Departments, if designated by the Military Department concerned, to serve as board members on the Resale Activities Board.

5.1.3. Monitor the activities of the Resale Activities Board of Review and ensure that the Board discharges its responsibilities as set forth in section 6., below, of this Instruction.

5.2. The Secretaries of the Military Departments shall ensure that their respective component DoD resale activities comply with this Instruction and may designate a senior representative to serve on the Board.

5.3. The Secretary of the Army and the Secretary of the Air Force shall each appoint one senior representative from the Army and Air Force Exchange Service to serve on the Board.

5.4. The Secretary of the Navy shall appoint a senior representative from the Navy Exchange Service Command and a senior representative from the Marine Corps Exchange Service to serve on the Board.

## 6. PROCEDURES

6.1. The Board shall have the authority and responsibility periodically to review material offered or to be offered for sale or rental on property under DoD jurisdiction, and to determine whether any such material is sexually explicit in accordance with this Instruction. Within 60 days of the issuance of this Instruction, the Board shall

undertake and complete an initial review of material that is offered for sale or rental on the date that this Instruction becomes effective.

6.2. If the Board determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material shall be withdrawn from all retail outlets where it is sold or rented and returned to distributors or suppliers, and shall not be purchased absent further action by the Board.

6.3. Following its initial review under subsection 6.1., above, the Board shall convene as necessary to determine whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit. The Board members shall, to the extent practicable, maintain and update relevant information about material offered or to be offered for sale or rental on property under DoD jurisdiction.

6.4. If any purchasing agent or manager of a retail outlet has reason to believe that material offered or to be offered for sale or rental on property under DoD jurisdiction may be sexually explicit as defined herein, and such material is not addressed by the Board's instructions issued under subsection 6.5., below, he or she shall request a determination from the Board about such material.

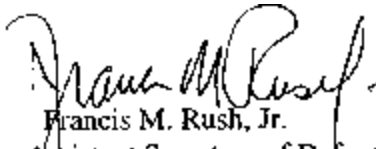
6.5. At the conclusion of its initial review under subsection 6.1., above, and, thereafter, from time to time as necessary, the Board shall provide instructions to purchasing agents and managers of retail outlets about the withdrawal and return of sexually explicit material. The Board may also provide instructions to purchasing agents and managers of retail outlets about material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

## **7. INFORMATION REQUIREMENTS**

The Chair, Resale Activities Board of Review, shall submit to the Assistant Secretary of Defense for Force Management Policy an annual report documenting the activities, decisions, and membership of the Board. The annual report shall be due on October 1. The annual report required by this Instruction is exempt from licensing in accordance with paragraph 5.4.3. of DoD 8910.1-M (reference (f)).

8. EFFECTIVE DATE

This Instruction is effective immediately.

  
Francis M. Rush, Jr.  
Acting Assistant Secretary of Defense  
Force Management Policy